BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

SCOTT ROBINSON	}
VS. Claimant	
POPCORN VIDEO	Docket No. 199,934
Respondent AND	}
CINCINNATI INSURANCE COMPANY Insurance Carrier	{

ORDER

Respondent appeals from a Preliminary Hearing Order of August 28, 1995, wherein Administrative Law Judge Shannon S. Krysl granted claimant benefits finding claimant had carried his burden of proof regarding accidental injury arising out of and in the course of his employment with respondent.

ISSUES

Whether claimant met with personal injury by accident arising out of and in the course of his employment on the date alleged.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purpose of preliminary hearing the Appeals Board finds as follows:

The issue above enumerated is specifically listed in K.S.A. 44-534a as appealable from a preliminary hearing order and as such this matter is properly before the Appeals Board.

Claimant, the night-shift manager for respondent, alleges he suffered accidental injury to his knee arising out of and in the course of his employment while pursuing a shoplifter on February 1, 1995.

Respondent contends claimant's injury is noncompensable as claimant was specifically instructed in the employee manual, in a robbery situation, to allow the robbers to take whatever they desire and to put up no resistance.

A review of the specific language of the employee manual verifies the manual specifies what to do in case of a robbery and specifically talks about the maintaining of the money drawer. The particular section of the employee manual placed into evidence does not discuss circumstances surrounding a shoplifting incident. The testimony is

contradictory regarding whether claimant was specifically informed as to how to act if he encountered a shoplifter.

As there is ambiguity as to the specific instructions provided to the claimant regarding shoplifters, the Appeals Board finds that the accidental injury to claimant's knee on February 1, 1995, cannot be deemed to have resulted from a prohibited act; and, as such, the Appeals Board finds the incident on February 1, 1995 did arise out of and in the course of claimant's employment with respondent. The Appeals Board finds that the Order of Administrative Law Judge Shannon S. Krysl dated August 28, 1995, should be affirmed in all respects.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Shannon S. Krysl dated August 28, 1995, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.
Dated this day of November 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Greg Lower, Wichita, KS Lyndon W. Vix, Wichita, KS Shannon S. Krysl, Administrative Law Judge Philip S. Harness, Director